

Section 8.1

Procedures for Complaints, Investigations, and Compliance

The MDA has a long history enforcing agricultural laws. MDA investigators have substantial experience investigating complaints about violations of law. The MDA has experience administering civil and administrative enforcement proceedings including assessment of monetary civil penalties, stop sale of products in violation, suspension and revocation of licenses, and judicial enforcement. All laws including organic certification standards are enforced impartially and according to the letter of the law.

All staff that conduct investigations are trained in procedures for entry, opening conferences, interview techniques, evidence gathering, sampling, chain of custody, observations, closing conferences, and report writing. Experienced department staff conduct training, but the program also utilizes private and government training. Examples of government training include that provided by the EPA's National Enforcement Training Institute and USDA's Investigative and Enforcement Service, a branch of the Animal and Plant Health Inspection Service.

Scope of Compliance Program

The Organic Certification Program evaluates all complaints of violations of the NOP and state organic rule. After a complaint is evaluated, an appropriate course of action will be determined from the following alternatives:

- Any complaint involving an operation that is certified by the MDA will be further investigated.
- Complaints involving an operation that is certified by another certifier will be referred to the NOP Administrator for investigation and appropriate action.
- Complaints involving exempted or excluded producers or handlers will be referred to the NOP Administrator.
- Complaints involving drift to any organic producer or handler, whether exempt, excluded, or certified by the MDA or another certifier, will be investigated by the MDA's pesticide enforcement program under the authority of the Montana Pesticides Act and the Federal Insecticide, Fungicide and Rodenticide Act. In general, drift of pesticides is a violation of the pesticide label. The MDA will take appropriate action regarding drift of prohibited substances to an operation certified by the MDA, and the MDA will notify the NOP Administrator of drift to an operation not certified by the MDA.
- The MDA investigates complaints or sampling evidence that regarding the presence of prohibited substances in certified operations. Investigative reports involving operations not certified by the MDA are forwarded to the NOP Administrator.

Complaint Intake and Evaluation

Complaints are received through a variety of media including phone calls, letters, email, in person, or passed down from person to person. All persons submitting complaints are treated professionally, and their complaints are handled seriously. Complaining parties are requested and encouraged to submit complaints in writing, to be factual and detailed, and to sign their

complaints. Most complaints come by phone to MDA employees who are patient and thorough in asking the right questions and obtaining pertinent, detailed information.

A complaint form is available for the public to use for submitting complaints (see Section 8.2). This form also assists organic program employees to document complaints received by phone. The form is available from the Organic Program website.

The MDA recognizes that persons may wish to submit anonymous complaints for legitimate reasons. Anonymous complaints are often not in writing and may not be detailed. While these complaints are more difficult to evaluate and investigate, the department does not dismiss outright a complaint because it is not submitted in writing or not signed. These complaints are evaluated and investigated to the degree possible.

Follow-up contacts are frequently necessary to obtain information about a complaint. This may involve traveling to meet with the complaining person or with other parties with pertinent knowledge or observations.

A detailed complaint facilitates the process of complaint evaluation. Complaint evaluation is the process of evaluating the legitimacy of a complaint and whether it offers information that supports a violation of law and a subsequent investigation. These conclusions allow the MDA to determine an appropriate action, whether this is to investigate, refer to the NOP Administrator, or other action. Other action may be to drop the complaint if the alleged activity is not in violation.

All persons who file complaints receive written correspondence from the MDA to inform them of conclusions and actions taken as a result of complaint evaluation and investigation.

Investigations

All legitimate complaints involving operations certified by the MDA are impartially investigated. An investigation includes a meeting with the accused person(s) and an opportunity for them to explain and provide a written statement. Investigations are thorough, and they may include any of the following elements:

- Careful, documented observations and photographs.
- Affidavits or signed statements from accused persons, witnesses, and others.
- Photocopies or documentary samples of records, labeling advertising, bills of lading, and invoices.
- Samples of products or environmental media for residue analyses.

Inspectors follow recognized procedures for gaining entry, collecting and preserving evidence, and conducting closing conferences. Inspectors maintain field log books to record observations and other findings.

Investigators prepare a final report of each investigation. This includes a factual narrative arranged in chronological order, and documentary evidence is attached to the narrative. These attachments include sample results, records, documentary evidence, statements and affidavits, photos, and other evidence. A description is included of any actions taken by the operation to

correct violations. The final report includes the investigator's preliminary determination of violations.

Pesticide Drift Investigations

Complaints of pesticide drift or off-target movement are referred to the pesticide regulatory program to be investigated. Pesticide inspectors follow established standard operating procedures for investigating and collecting samples to investigate pesticide drift. Investigations include a sampling plan to investigate the presence of residues on the organic field or product. A copy of the standard operating procedure is included in Section 8.3.

Enforcement Proceedings: Non-compliance notification and denial, suspension or revocation of certification procedures.

The Field Services Bureau Chief conducts a final review of all investigations and the investigator's conclusions. The Bureau Chief initiates enforcement actions under broad oversight from the Division Administrator. The MDA notifies the NOP Administrator when enforcement actions are initiated. The MDA follows the noncompliance procedures set forth in Sections 205.405 and 205.662 of the NOP rules. These proceedings and the rights of charged parties are conducted according to the contested case provisions of the Montana Administrative Procedure Act (Title 2, Chapter 4, Montana Codes Annotated). A summary of non-compliance procedures is as follows:

1. The MDA sends a written notice of non-compliance to the certified operation describing the violation, the facts upon which the notice of non-compliance is based, and the date by which the operation must rebut or correct the non-compliance and send documentation of correction. The written notice explains the operation's options pursuant to 7 CFR 205.405, adopted as state law.
2. If the MDA has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the MDA may deny certification without first issuing a notification of noncompliance.
3. Upon receipt of a notice of non-compliance, an applicant or certified operation may:
 - (1) Correct non-compliances and submit a description of the corrective actions taken with supporting documentation to the certifying agent;
 - (2) Correct non-compliances and submit a new application to another certifying agent: Provided, That, the applicant must include a complete application, the notification of non-compliance received from the first certifying agent, and a description of the corrective actions taken with supporting documentation; or
 - (3) Submit written information to the issuing certifying agent to rebut the non-compliance described in the notification of non-compliance.
4. If non-compliance is resolved through correction or rebuttal, the MDA sends a written notice of resolution.
5. For new applicants, when rebuttal is unsuccessful, the non-compliance is not corrected or the applicant fails to respond to the notice of non-compliance, the MDA must send a notice of denial of certification. When correction is not possible, the notification of non-

compliance and denial may be combined. The notice of denial of certification must state the reason(s) for denial of certification and applicant's right to:

- (1) Reapply for certification pursuant to §§ 205.401 and 205.405(e);
- (2) Request mediation pursuant to § 205.663 or,
- (3) File an appeal of the denial of certification pursuant to § 205.681

6. For certified operations, when rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the department shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a non-compliance is not possible, the notification of non-compliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification shall state:
 - (1) The reasons for the proposed suspension or revocation;
 - (2) The proposed effective date of such suspension or revocation;
 - (3) The impact of a suspension or revocation on future eligibility for certification; and
 - (4) The right to request mediation pursuant to § 205.663 or to file an appeal pursuant to § 205.681.
7. Upon receipt of a notice of proposed suspension or revocation of certification, a certified operation may request mediation pursuant to § 205.663 or file an appeal pursuant to § 205.681.
8. Willful violations are subject to proposed suspension or revocation of certification, and violations committed knowingly are subject to civil penalties. Any certified operation that makes a false statement to a Certifying Agent under the Act (7 CFR 205) may be subject to federal penalties under section 1001 of title 18, US Code.
9. After issuing a notice of proposed suspension or revocation of certification, the MDA sends a written notice of suspension or revocation of certification if the charged parties fail to correct the noncompliance, resolve it through rebuttal or mediation, or file an appeal. This notification includes a statement of the person's right to appeal the action to the NOP Administrator pursuant to 7 CFR 205.681.
10. Notification of final action to suspend or revoke certification is not given when a party has requested mediation or appealed and final resolution of either is pending.
11. The MDA notifies the NOP Administrator of any notifications of non-compliance, denial of certification, proposed suspension or revocation, or final revocation or suspension. This notice is accomplished by mailing a copy of the notification to the NOP Administrator.
12. All notices of non-compliance, denial of certification and proposed suspension or revocation of certification must inform the recipients of their rights to re-apply for certification, pursuant to 7 CFR 205.405 (e), as well as their responsibility to provide other certifiers with a copy of all notices of non-compliance, denial of certification or proposed suspension or revocation of certification and documentation of actions taken to correct the non-compliance.

All non-compliance proceedings initiated by the MDA are subject to the contested case provisions of the Montana Administrative Procedure Act. A copy of this Act is attached as Section 8.4. The MDA notifies persons of their rights afforded by this law in all notices of noncompliance.

Mediation

A certified operation may request mediation of a proceeding to deny certification or proposal to suspend or revoke certification (7 CFR 205.663). Mediation means a confidential, informal dispute resolution process in which an impartial and neutral third person, knowledgeable about organic certification standards, assists the parties to resolve the dispute. Results of mediation are disclosed to the NOP Administrator, but otherwise remain confidential. The MDA is guided by standards for mediation established in 26-1-813, MCA (Statutory Provisions on Evidence), a copy of which is included as Section 8.5.

The MDA conducts mediation proceedings in an atmosphere that is conducive to settlement and as non-intimidating as possible for all parties. Persons can choose to represent themselves or be represented by an attorney. Where certified persons choose not to be represented by counsel, the mediator may choose to use informal procedures. However, mediators have the option to provide structure to the mediation and to apply rules of evidence and civil procedure as may be appropriate when either or both sides are represented by counsel.

The MDA maintains a list of approved, neutral mediators that includes members of the Organic Commodity Advisory Council. Certified operations may choose from these mediators, and they may propose a mediator from outside of the department. A mediator shall be chosen by mutual consent. If a mediator cannot be chosen by mutual consent, the MDA shall select a mediator from a pool of mediators in state government outside of the department.